

DWR's DRAFT Edits to Contractors' 5th Offer

Summary To-Date of Contract Extension Negotiation Proposed Offers

May 1, 2013	Contractors' 1st Offer (Initial Offer)
May 1, 2013	DWR's 1st Offer (Initial Offer)
June 26, 2013	Contractors' 2nd Offer
July 10, 2013	DWR's 2nd Offer
August 7, 2013	Contractors' 3rd Offer
September 4, 2013	DWR's 3rd Offer
September 17, 2013	Contractors' 4th Offer
October 2, 2013	DWR's 4th Offer
October 16, 2013	Contractors' 1st Tentative Offer
October 23, 2013	DWR's 1st Tentative Offer
December 17, 2013	Contractors' 5th Offer
<u>January 8, 2014</u>	<u>DWR's Edits to Contractors' 5th Offer</u>

Outline of the Contractors' Proposed Offer

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| II. | Objective 2A | Reserves |
| III. | Objective 2B | Accounts (SSA, SRA, FCA) |
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| V. | Objective 2D | Financial Management |
| VI. | Objective 2E | Supplemental Billing |
| VII. | Objective 3A | Simplification of Billing |
| VIII. | Objective 3B | RAS |
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| X. | Objective 3D | Billing Authorization |
| XI. | Objective 4 | BDCP and DHCCP Participation |

DWR REDLINE OF STATEMENT OF PRINCIPLES BY THE SWP CONTRACTORS

I. OBJECTIVE 1: TERM OF CONTRACT

A. Water Supply Contract Term Extension

1. Extend term of the SWP water supply contracts by 7540 years from December 31, 2035 to December 31, 2075410. (Final term pending outcome of Objectives 2, 3, and 4.)

II. OBJECTIVE 2A: RESERVES

A. General Operating Account (GOA)

1. **Uses of GOA** - Cash flow deficiencies resulting from chargeable water supply purposes and during a SWRDS emergency for any SWRDS purpose.

2. **SWRDS Emergency** - An immediate, urgent, critical, unexpected, or impending situation that, in the Director's judgment, may cause or pose a risk of causing injury, loss of life, damage to the property, impairment of the financial condition, and/or interference with the normal activities of the State Water Resources Development System which requires immediate attention and remedial action.
3. **Initial Cap** - Increase the authorized General Operating Account (GOA) balance from \$22.7 million to \$150 million pursuant to Article 51(a)(3).
4. **Cap Adjustment Determination** - Every five years there shall be a business case analysis on the GOA authorized cap including an evaluation of the cap and business risks associated with SWRDS cash flow provided to the SWRDS Finance Committee for recommendation to the DWR Director regarding a GOA cap adjustment. If there is a decrease in the cap (but the cap shall not be lower than \$150 million), the excess funds would be transferred to the SRA.
5. **Cap Adjustment Funding Source (Pre-2035)** - Shall be the Director's discretion to use 51(e) revenues, investment earnings retained in the GOA, and transfers of funds from the SRA and SSA.
6. **Cap Adjustment Funding Source (Post-2035)** - Shall be the Director's discretion to use the investment earnings retained in GOA, and the funds within the SRA and SSA.
7. **Rate of Funding for Cap** - Limitation on the amount (\$2 million per year) and timing of additional contributions to the GOA contained in Article 51(e)(3)(v) will be deleted. DWR will be able to use any amount of available 51(e) revenues to increase funds in the GOA up to the authorized maximum GOA funding level and such funding shall be subordinate to the annual rate management reductions to the water contractors.
8. **GOA Replenishment** - Replenishment of the use of GOA funds will come from charges to the water contractors to the extent the expended funds were spent on chargeable water supply purposes and from the SSA or other available revenues for GOA funds spent on non-chargeable expenditures.
9. **GOA Reporting** - DWR will prepare regular reports on the GOA for the Director, which reports will be provided to shared with the water contractors through the SWRDS Finance Committee or a technical committee as directed by the SWRDS Finance Committee.
- ~~10. **GOA Notice of Use** - Anytime the GOA is used, DWR will send a Notice to Contractors, notifying Contractors of the event. (Note: Reports to be provided to SWRDS Finance Committee pursuant to the above Item 9.)~~
- ~~101.~~ **GOA Investment Earnings** - shall be used as follows:
 - a) Funding GOA to authorized GOA funding level;

- b) Transferred, at the discretion of the Director, to the SWRDS Support Account (SSA) and/or to the SWRDS Reinvestment Account (SRA).

III. OBJECTIVE 2B: ACCOUNTS (SSA, SRA, FCA)

A. SWRDS Reinvestment Account (SRA)

1. **Effective Date of SRA** - The SRA shall be established and take effect upon the effective date of the contract extension amendment.
2. **SRA Uses** - The primary purpose is to provide a post-2035 SWRDS revenue stream by investing SRA funds in SWRDS facilities and programs.
3. **Funding Source** - At the discretion of the Director, ~~the balance of available~~ Article 51(e)(1)(~~iii~~)(ii) revenues collected by the State pre-2035. (Article 51(e)(1)(ii) appears to be the appropriate reference.)
4. **Cap on SRA** - There will be no Cap or Cap Adjustments to the SRA.
5. **SRA Replenishment** - ~~Does not apply given the nature of this account is to preserve and invest the SRA balance of Article 51(e)(1)(iii) collected by the State.~~ Replenishment of the SRA will come from the return of principal, interest, and earnings on investments in addition to transfers from other accounts such as the GOA.
6. **SRA Investments** - At the discretion of the Director, authorized SRA investments shall be as follows:
 - a) Investment in SWRDS capital facilities, recovered at the prevailing municipal bond market rates corresponding to the SWRDS bond rating at the time of financing, in maturity ranges that may extend 10 to 50 years;
 - b) Temporary financing in lieu of the SWRDS commercial paper program; and
 - c) Allowable investments instruments per state government code for the SWRDS.
7. **Use of SRA Investment Earnings** - At the discretion of the Director, the SRA funds, including but not limited to investment earnings, shall be used to:
 - a) Provide a source of replenishment funds to the SSA;
 - b) Provide a source of funds to be held in the SRA for investment purposes; and
 - c) Provide a funding source for funding level adjustments to the GOA.
8. **SRA Review** - The ~~contractors~~ SWRDS Finance Committee isare to be consulted ~~through the SWRDS Finance Committee~~ about the investments and activities to be funded from the SRA.

9. **SRA Reporting** - DWR will prepare regular reports on the SRA for the Director, which reports will be provided to shared with the water contractors through the SWRDS Finance Committee ~~or a technical committee as directed by the SWRDS Finance Committee.~~

B. SWRDS Support Account (SSA)

1. **Effective Date of SSA** - The SSA shall be established and take effect upon the effective date of the contract extension amendment.
2. **SSA Uses** - The purpose of the SSA shall be to provide a source of funds to pay for costs of the System where there are no funds or revenue sources available to pay for such costs. These costs could be for any legally permissible activity for SWRDS which lacks a source of funding temporary or permanently. ~~b) If reimbursement or a source of revenue is received after the expenditure is incurred this revenue should~~ shall be included deposited in the SSA.

~~a) The SSA shall be the sole source of funding, accounting, and reporting for all legally permissible activity for SWRDS expenditures without a source of revenue.~~

~~b) If reimbursement or a source of revenue is received after the expenditure is incurred this revenue should be included in the SSA.~~

- ~~3. **SSA Review** - The contractors are to be consulted through the SWRDS Finance Committee about the projects and activities to be funded from the SSA. (Note: Reports to be provided to SWRDS Finance Committee pursuant to the below item.)~~

34. **SSA Reporting** - DWR will prepare regular reports on the SSA for the Director, which reports will be provided to shared with the water contractors through the SWRDS Finance Committee ~~or a technical committee as directed by the SWRDS Finance Committee.~~

45. **Initial Cap** - \$60 million

56. **Cap Adjustment Determination** - No Adjustments, except following but this is subject to the review and recommendation of the SWRDS Finance Committee to the Director to make an adjustment.

67. **Funding Source for Initial Funding** - 51(e) revenues and/or the remaining balance of the Facilities Capital Account (FCA) once the FCA is closed.

78. **SSA Replenishment** - Shall be accomplished through 1) reimbursements received for expenditures made from the SSA; 2) at the discretion of the Director, transfers from the SRA and/or from the GOA's available investment earnings, 3) deposits, in the discretion

of the Director, from other available system revenues, and 34) interest and other investment income retained in the SSA.

89. **SSA Interest Earnings** – At the Director’s discretion, retained in the SSA to reduce the annual SRA replenishment requirement.

910. **SSA Backstop** - The contract will prohibit the Department from billing the Contractors for any SSA funding or backstop. (TO BE DISCUSSED.)

C. State Water Facilities Capital Account (FCA)

1. The State Water Facilities Capital Account (FCA) pursuant to Article 51(c)(2)(v) shall continue through December 31, 2035 and on January 1, 2036 shall be closed and the balance of the account transferred to the State Water Resources Development System Support Account (SSA), provided that the Director will have the discretion to close the account and transfer the funds prior to January 1, 2036.

IV. OBJECTIVE 2C: FLOW OF FUNDS

A. Maintain the Monterey Amendment Article 51 Flow of Funds with the following edits/additions:

1. Increase Annual Rate Reductions to \$648 million.
2. ~~To facilitate reporting, and prioritize funding and replenishment of the GOA, SSA, and SRA, f~~Following the \$648 million in annual rate reductions, the Director has the discretion to allocate available the balance of 51(e) revenues ~~determine in Article 51(e)(1)(ii) only~~ into the following three accounts:
 - a) General Operating Account (GOA)
 - b) SWRDS Support Account (SSA)
 - c) SWRDS Reinvestment Account (SRA)
3. Contractors shall agree to forego additional rate management reductions including additional rate management reductions to make up for deficiencies in past projected rate management reductions or to provide any additional rate management reductions above \$648 million annually pursuant to Article 51(e)(3) ~~(i)(ii)(iii)(iv)(vi)~~. Effective with the contract amendment, Article 51(e)(3) shall be deleted.
4. Contractors shall agree to waive and release certain claims that were reserved in the Tolling and Waiver Agreement executed in 2007 relating to: (TO BE DISCUSSED)
 - a) The use of bond proceeds to pay for recreation costs and the related adjustments made to the contractors bills;

- b) Accounting for the costs of the San Joaquin Drainage Program and;
 - c) The adjustment of water supply responsibility for certain Delta Facilities (see Section 1(b)(2), (3), (4) and (5) of the Tolling and Waiver Agreement).
5. Contractors shall agree to waive and release other issues relate to:
- a) DWR's recent adjustment of the water contractors' responsibility for facilities south of Dos Amigos and;
 - b) DWR's treatment of energy from off-aqueduct power facilities.

V. OBJECTIVE 2D: FINANCIAL MANAGEMENT

A. State Water Resources Development System Finance Committee

- 1. Immediately, the Department of Water Resources shall establish a joint Department of Water Resources and Contractor finance committee (Committee).
- 2. The membership of the Committee shall include both representatives from the Department of Water Resources and representatives from the contractors.
- 3. The primary purpose of the Committee shall be to make recommendations to the Director of the Department of Water Resources concerning the finances financial processes (TO BE DISCUSSED) of the State Water Resources Development System.
- 4. The Department of Water Resources and the Contractors water supply contract shall describe the scope of the committee in a include a Committee charter, mutually agreeable to the Department of Water Resources and the Contractors, describing the scope of the Committee.

~~B. Single Point of Financial Authority for SWRDS~~

- ~~1. DWR shall create and fill a position, reporting directly to the SWP Deputy Director, with the authority and responsibility to manage or to act as the designated SWP Deputy Director on the finances of the State Water Resource Development System. The responsibilities of this position shall include, but not be limited to, the following:~~
 - ~~a) Responsible for presenting and reporting accurate and timely SWRDS actual and forecasted financial information to facilitate management decisions by both DWR and the State Water Project Contractors; and~~
 - ~~b) Responsible for the oversight of the SWRDS current and future financial condition including water sales, financial and managerial accounting, debt financing, capital infrastructure, energy portfolios, financial policies, and treasury and investments management. (Note: To be addressed in committee charter.)~~

VI. OBJECTIVE 2E: SUPPLEMENTAL BILLING**A. Supplemental Billing**

1. ~~Eliminate the~~ The supplemental billing provisions authorized under Article 51(c)(4) shall remain effective through December 31, 2035.

VII. OBJECTIVE 3A: SIMPLIFICATION OF BILLING**A. Implement the Freeze-Go Billing Methodology**

1. Methodology will freeze all costs incurred prior to January 1, 2016, and continue repayment consistent with current contract terms.
2. Methodology will recover all costs incurred after December 31, 2015, by converting and authorizing repayment on a Pay-As-You-Go methodology.
3. Amend the definition of the Project Repayment Period to apply only to those costs incurred prior to January 1, 2016.
4. The term of the Project Repayment Period, January 1, 1961 through December 31, 2035, will remain the same.
5. The Water Systems Revenue Bond Surcharge will apply only to those costs incurred prior to January 1, 2016 and will terminate at the completion of the Project Repayment Period.
6. Amend the definition of the Project Interest Rate to apply only to those costs incurred prior to January 1, 2016. The Project Interest Rate will remain 4.610%.

B. Defining the Pay-As-You-Go Repayment of Costs Incurred Post-2015

1. The annual cost recovery within a bill year for estimated annual operation, maintenance, power, and replacement costs for project conservation facilities.
2. The annual recovery of actual debt service, created by SWRDS financing activities, within a bill year for financed capital transportation and conservation facilities.
3. Other costs, including capital costs not being financed, that are appropriately allocated to reimbursable water supply.

C. Defining the Pay-As-You-Go Repayment of Actual Debt Service from SWRDS Financing Post-2015 Capital Costs

1. Authorize SWRDS to finance 100% of all capital costs.

2. Authorize SWRDS to use various methods of financing including Water System Revenue Bonds and SRA, with each method providing an annual repayment schedule which includes a principal and interest component over the life of the financing.
3. Authorize SWRDS to bill an amount that is equal to the accumulated annual debt service payments due per the debt service schedules or matching dollar for dollar the SWRDS annual debt service payments including the bond cover requirements, providing 100% capital cost recovery at the financed interest rate over the term of the financing while meeting the additional bond debt cover requirements.

VIII. OBJECTIVE 3B: REPLACEMENT ACCOUNTING SYSTEM (RAS)

A. Elimination of the Replacement Accounting System (RAS)

1. Eliminate the Replacement Accounting System (RAS) for Transportation and Conservation Facilities with the intent to have replacement costs treated as a minimum or capital cost.
2. The unencumbered cash balance of the RAS funds are to be returned to the SWP Contractors using the RAS allocation methodology.

IX. OBJECTIVE 3C: ARTICLE 1 (hh)

A. Expanding Water System Facilities Authorized to be Financed by Water System Revenue Bonds Under Article 1(hh)

1. Eliminate the January 1, 1987 date for existing facilities within Article 1(hh)(8); provision to now read as follows, " Finance all repairs, additions, and betterments to conservation or transportation facilities and to all other facilities described in this sub-article (hh) except for item (5) the land acquisition prior to December 31, 1995 for the Kern Fan Element of the Kern Water Bank."
2. Add provision to Expand 1(hh) to include "Finance all other capital projects (i.e. projects and programs for which revenue bonds can be sold) mutually agreed upon in writing by DWR and 80% of the affected Contractors, provided that the approving Contractors' Table A amounts exceed 80% of the Table A amounts representing all affected Contractors". "Affected Contractors" mean those contractors which would be obligated to pay a share of the debt service for such project.

X. OBJECTIVE 3D: BILLING AUTHORIZATION

A. Contractors' Liability to the Return to the State

- ~~1. The Department shall not charge the SWP Contractors for non-water supply costs or reallocate non-water supply costs to water supply as the result of non-recovery from a non-water supply beneficiary. (THIS IS A PLACEHOLDER)~~

XI. OBJECTIVE 4: BDCP AND DHCCP PARTICIPATION